UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN

MICHAEL HORNUNG,

Plaintiff,

Case No.
Hon.

CAVALRY SPV I, LLC and
STENGER & STENGER, P.C.,

Defendant(s).

____/

COMPLAINT

Plaintiff Michael Hornung, by and through his attorney, the Law Offices of Nicholas A. Reyna P.C., alleges the following:

Nature of Action

1. Plaintiff brings this action against the Defendants seeking damages and equitable relief, to redress the Defendant's systemic violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, violations of the Michigan Collection Practices Act ("MCPA"), M.C.L. § 445.251 *et seq*, and the Michigan Occupational Code, M.C.L. § 339.901 ("MOC").

Parties

2. Plaintiff Michael Hornung ("Plaintiff") is a citizen of Michigan residing in Algonac, Michigan.

3. Defendant Cavalry SPV I, LLC ("Cavalry I") is a New York-based debt collection firm whose resident Agent the Corporation Company located at 40600 Ann Arbor Rd E Ste. 201, Plymouth, Michigan. Cavalry I uses interstate commerce and the

mails in a business whose principal purpose is the collection of debt. Cavalry I regularly collects or attempts to collect, directly or indirectly, debt owed or due or asserted to be owed or due another. Cavalry I is a "debt collector" as the term is defined and used in the FDCPA. Cavalry I is a "regulated person" as the term is defined and used in the MCPA.

4. Defendant Stenger & Stenger PC ("Stenger & Stenger") is a Michigan-based Domestic Profit Service Corporation whose registered office is located at 2618 East Paris Avenue SE in Grand Rapids, MI 49546. Stenger & Stenger uses interstate commerce and the mails in a business whose principal purpose is the collection of debt. Stenger & Stenger regularly collects or attempts to collect, directly or indirectly, debt owed or due or asserted to be owed or due another. Stenger & Stenger is a "debt collector" as the term is defined and used in the FDCPA. Stenger & Stenger is a "regulated person" as the term is defined and used in the MCPA.

5. During all times pertinent hereto, the Defendants and/or its' representatives directly and indirectly participated in efforts to collect alleged debts from the Plaintiff and presumably others as stated below in this complaint.

6. The Defendants each represent a collection agency operating as a "Debt Collector as that term is defined by 15 U.S.C. 1692a(6).

7. A shareholder, owner, officer, member, manager, employee or agent of a corporate debt collector can be held liable for violating the FDCPA without piercing the corporate veil, by being directly involved in the day-to-day operation of the company, including the training and managing of employees, reviewing or supervising collection activities, overseeing compliance with applicable collection laws, ratifying unlawful acts, and the like, for the reason that each such individual is himself a "debt collector" within

the statutory definition, namely, each is a "person" in a business, "the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. §1692a(6). See, *Kistner v. Law Offices of Michael P. Margelefsky, LLC*, 518 F.3d 433, 435-38 (6th Cir. 2008); *Russell v. Goldman Roth Acquisitions, LLC*, 847 F.Supp. 2nd 994, 1004-06 (W.D.Mich. 2012).

Jurisdiction and Venue

8. This Court has jurisdiction under 15 U.S.C. § 1692k(d) (FDCPA) and 28 U.S.C. §§ 1331 and 1337. This Court has supplemental jurisdiction regarding the Plaintiff's state law claims under 28 U.S.C. § 1367. Venue in this jurisdiction is proper because the Defendants transact business here, the pertinent events took place here, and the Plaintiff resides here.

Factual Background

9. On or around April 24, 2017, a complaint was filed in the 52nd District Court (Second Division) of Michigan by the Defendants against the Plaintiff pursuant to an open credit account originally opened by the Plaintiff with Citibank, N.A./Sears with the Plaintiff's purported failure to pay on same resulting in a sum due and owing to the Defendants as Successor in Interest of the account in the amount of $2,507.66 which the Plaintiff denies. The relevant case number is 17-C01294GC. The summons and complaint issued at that time provided a purported address for Mr. Hornung at 10300 Reese Road in Clarkston, Michigan 48348-1862.

10. The debt purportedly owed by the Plaintiff was related to personal, family or

household purposes and is therefore representative of "consumer debt" as that term is defined by 15 U.S.C § 1692a(5).

11. At the time the lawsuit at issue was commenced, the Plaintiff's driver's license on file with the State of Michigan indicated a current address of 2827 Pointe Tremble Road in Algonac, Michigan 48001 in Saint Clair County (*see Exhibit A*). Indeed, no evidence was or can be proffered which would have granted the Defendants to initiate their lawsuit in the subject jurisdiction.

12. Pursuant to 15 U.S.C. 1692i, a debt collector who brings any legal action on a debt against a consumer shall bring such action only in the judicial district or similar legal entity (A) in which such consumer signed the contract sued upon or (B) in which such consumer resides at the commencement of the action.

13. As the Plaintiff did not sign the contract within the relevant judicial district, and demonstrably did not reside within that district at commencement of the underlying case at issue, the action was effectively filed in the wrong venue in direct contravention of the cited provision of the FDCPA.

14. When the Plaintiff filed this lawsuit, a simple search utilizing the Defendant's identification information using any number of commercially available search engines such as www.accurint.com, www.google.com, www.google.maps.com, and/or any number of commercially available maps, would have readily disclosed that the Defendant was then residing outside this judicial district; the same inquiry would have easily confirmed that the Defendant did **not** reside Clarkston, Michigan. The Plaintiff failed to maintain and/or follow procedures reasonably adapted to avoid filing suit against the Defendant in the wrong judicial district.

15. The Fair Debt Collection Practices Act ("FDCPA") is a consumer protection statute that "imposes open-ended prohibitions on false, deceptive, or unfair debt collection practices." *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 587. 130 S.Ct. 1605, 1615 (2010).

16. The Fair Debt Collection Practices Act states that it is unlawful for a debt collector to use any false, deceptive, or misleading representation or means in connection with the collection of any debt. 15 U.S.C. § 1692e.

17. The FDCPA states that it is unlawful for a debt collector to make a false representation of the character, amount, or legal status of any debt. 15 U.S.C. §1692e(2)(A).

18. The FDCPA states that it is unlawful for a debt collector to take any action which it cannot legally take in connection with a particular debt. 15 U.S.C. § 1692e(5).

19. The FDCPA states that it is unlawful for a debt collector to communicate to any person credit information which is known or which should be known to be false. 15 U.S.C. § 1692e(8).

20. The FDCPA states that it is unlawful for a debt collector to use any false representation or deceptive means to collect or attempt to collect any debt. 15 U.S.C. § 1692e(10).

21. The FDCPA states that it is unlawful for a debt collector to use unfair or unconscionable means to collect or attempt to collect any debt, including the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. 15 U.S.C. § 1692f(1).

22. The Defendants violated the FDCPA, 15 U.S.C. §§ 1692e and 1692e(2)(A), (8), and (10), and 1692f(1). See, e.g., *Watkins v. Peterson Enterprises, Inc*., 57 F.Supp.2d 1102 (E.D. Wash. 1999). Most explicitly, the Defendants violated 15 U.S.C § 1692a(5).

23. The FDCPA is a strict liability statute and thus proof of one violation thereof is sufficient to support a finding of summary judgment in favor of a Plaintiff. *Cacace v Lucas*, 775 F. Supp. 502, 505 (D. Conn. 1991). Moreover, a plaintiff in such instances does not need to prove knowledge or intent. *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 952 (9th Cir. 2011). The Plaintiff also does not have to have suffered actual damages. *Kistner v. Law Offices of Michael P. Margelefsky, LLC,* 518 F.3d 433, 437 (6th Cir. 2008).

24. The described acts and omissions of the Defendants were done in connection with efforts to collect an alleged debt from the Plaintiff, such having been done intentionally and willfully.

25. The Defendants intentionally and willfully violated the FDCPA

26. As a direct and proximate result of the Defendants' negligence, the Plaintiff suffered a substantial and unjustifiable financial loss, to say nothing of the costs he has now had to expend to defend himself from the underlying, unjustified lawsuit demonstrably filed against him in the wrong venue.

27. As a further direct and proximate result of the Defendants' negligence, the Plaintiff has sustained consequential damages, including attorney fees and legal expenses.

Conclusions of Law

28. The collection actions taken against the Plaintiff by the Defendants violated numerous provisions of the FDCPA.

29. This Circuit has previously held that the omission of the bona-fide error defense in this state but otherwise available as an affirmative defense in other jurisdictions, thereby allowing debt collectors to show that their violation was unintentional, signifies Michigan's specific intent to avoid absolving debt collectors of liability, even for unintentional mistakes (e.g. initiating suit in the wrong district). *Gamby v. Equifax Information Services, LLC*, 2010 U.S. Dist. Lexis 1157, 1165 (E.D. Mich. Jan. 7, 2010).

COUNT I- VIOLATION OF 15 U.S.C. § 1692

30. Plaintiff incorporates by reference the aforementioned allegations as if restated fully herein word for word.

31. To reiterate, under 15 U.S.C. 1692i, a debt collector who brings any legal action on a debt against a consumer shall bring such action only in the judicial district or similar legal entity (A) in which such consumer signed the contract sued upon or (B) in which such consumer resides at the commencement of the action. The Plaintiff in this matter had absolutely no contacts with the district in which he was sued, and certainly did not sign the contract underlying the complaint in that district and/or reside there at the time the action was commenced.

32. This jurisdiction is reliant upon the "least sophisticated debtor" standard to determine whether a communication might effectively deceive an unsophisticated consumer under 15 U.S.C. 1692. *Smith v Computer Credit*, 167 F.3d 1052 (6th Cir. 1999). More specifically, "the fact that a false statement may be obviously false to those

who are trained and experience does not change its character, nor take away its power to deceive others less experienced." *Federal Trade Commission v Standard Education Society*, 302 U.S. 112, 116, 50 S.Ct. 113, 115, 82 L.Ed. 141 (1937). It seems sensible to suggest that attempts such as those by the Defendants to initiate the underlying lawsuit against the Plaintiff despite doing so in the wrong venue would certainly possess the potential to confuse a less sophisticated Debtor such as the Plaintiff in this instance, which it in fact did.

33. Contact between a debt collector and a debtor violates the FDCPA if it explicitly or implicitly represents that the debt collector can sue on a debt when it cannot do so. *Kimber v Federal Fin. Corp*., 668 F. Supp. 1480, 1489 (M.D. Ala. 1987). Indeed, this is an instance of a creditor not only explicitly threatening a lawsuit which could not have been filed in the district at issue given the foregoing facts, but indeed utilizing legal process to attempt such collection. As such, the contact clearly violated the FDCPA for the foregoing reasons.

34. For a communication to be in connection with the collection of a debt, an animating purpose of the communication must be to induce payment by the debtor." *Grden v Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6^{th} Cir. 2011). All communications from the Defendants, their agents, and representatives to the Plaintiff, both orally and in writing, shared the same animating purpose- to coerce the Plaintiff into paying them amounts he should not have been legally required to pay given the basis for same was a lawsuit filed in the incorrect venue.

35. Generally, the FDCPA permits recovery of actual damages for emotional distress. More specifically, pursuant to 15 U.S.C. § 169k(a)(1), "any debt collector who

fails to comply with the FDCPA with respect to any person is liable to such a person in an amount to the sum of…any actual damages sustained by such person as a result of such failure. Commentary to the FDCPA goes on to state that such actual damages for FDCPA violations include "damages for personal humiliation, embarrassment, mental anguish, or emotional distress," as well as "out-of-pocket" expenses." Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, 50109 (Dec. 13 1988). See also *Beeker v. Montgomery, Lynch*, 2003 WL 23335929 at 2 (N.D. Ohio) (FDCPA permits recovery of actual damages for emotional distress).

36. Districts within the Sixth Circuit including the Northern District of Ohio have concluded that the FDCPA does not require a plaintiff to satisfy the state law elements of intentional or negligent infliction of emotional distress to recover actual damages for such under 15 U.S.C. § 1692k(a). *Id* at 2. See also *Minick v. First Federal Credit Control, Inc*. 1981 U.S. Dist. LEXIS 18622, at 3-4 (N.D. Ohio). "Actual damages for emotional distress can be proved independently of state law requirements" for intentional or negligent infliction of emotional distress. *Smith v. Law Offices of Mitchell N. Kay*, 124 B.R. 182, 188 (D. Del. 1991). In addition, courts have previously concluded that a Plaintiff may prove actual damages for emotional distress purely through his or her own testimony. *Wantz v. Experian Information Solutions*, 386 F.3d 829, 834 (7^{th} Cir. 2004).

37. Moreover, under the FRCA, actual damages may include economic damages and damages for "humiliation and mental distress." *Bryant v. TRW, Inc.*, 487 F. Supp. 1234, 1239-40 (E.D. Mich. 1980). The court in that instance instructed the jury to consider mental anguish, embarrassment, and humiliation in determining the proper measure of actual damages to award the victim of a FRCA violation. *Id* at 1239. Such is

particularly important given that the damages standard under the FRCA has been looked to when determining the appropriate standard under the FDCPA. *Smith* at 187.

38. The sustained efforts to collect an amount from the Plaintiff which he was not required to repay caused him humiliation and distress.

39. As an actual and proximate result of the acts and omissions of the Defendants, the Plaintiff has suffered actual damages and injury, including but not limited to, monetary loss, fear, stress, mental anguish, emotional stress, anxiety, for which the Plaintiff should be compensated in an amount to be established by jury and at trial.

COUNT II- VIOLATION OF THE MICHIGAN OCCUPATIONAL CODE

40. Plaintiff incorporates by reference the aforementioned allegations as if restated fully herein word for word.

41. The Defendants represent a "collection agency" as that term is defined in the Michigan Occupational Code ("MOC"), M.C.L. § 339.901(b).

42. The Plaintiff is a debtor as that term is defined in M.C.L. § 339.901(f).

43. The Defendants' foregoing acts in attempting to collect the alleged debt at issue violated MCL § 339.915e, which prohibits a Licensee from "making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt."

44. The Defendants' foregoing acts in attempting to collect this alleged debt violated MCL 339.915f, which prohibits a Licensee from "misrepresenting in a communication with a debtor any of the following: (i) the legal status of a legal action being taken or threatened and/or (ii) the legal rights of the creditor or debtor."

45. The Defendants violated M.C.L. § 339.915(a) by communicating with the Plaintiff in a misleading or deceptive manner by filing a complaint against him in the wrong venue.

46. The Defendants violated M.C.L. §339.915(e) for the foregoing reasons.

47. The Defendants violated M.C.L. § 339.915(n) by using a harassing, oppressive, or abusive method(s) to collect a debt.

48. The Defendants violated M.C.L. 339.915(q) by failing to implement a procedure designed to prevent a violation by an employee.

49. The Defendants' violations of the Michigan Occupational Code were willful given the clear and unmistakable notice that could have easily been obtained verifying that the Plaintiff had no relationship with the district in which they initiated their lawsuit.

50. As an actual and proximate result of the acts and omissions of the Defendants, the Plaintiff has suffered actual damages and injury, including but not limited to, monetary loss, fear, stress, mental anguish, emotional stress, anxiety, loss of sleep and suffering, not to mention causing counsel for Plaintiff unnecessary additional work by having to deal with the situation, for which the Plaintiff should be compensated in an amount to be established by jury and at trial.

51. More specifically, due to the Defendants' willful violations of the MOC, the Plaintiff is entitled to actual damages above $50.00 pursuant to M.C.L. § 339.916; statutory damages in an amount up to $150.00 pursuant to M.C.L. § 339.916; and reasonable attorney's fees and court costs pursuant to M.C.L. § 339.916.

COUNT III- VIOLATION OF THE MICHIGAN COLLECTION PRACTICES ACT

52. Plaintiff incorporates by reference the aforementioned allegations as if restated fully herein word for word.

53. The Defendants represents a "Regulated Person" as that term is defined in the Michigan Collection Practices Act ("MCPA"), at MCL § 445.251.

54. Plaintiff is a "Consumer" as that term is defined at MCL § 445.251.

55. Generally speaking, "the Michigan Collection Practices Act prohibits abusive collection efforts…with respect to obligations arising out of a 'purchase made primarily for personal, family, or household purposes." *Levant v. Am. Honda. Fin. Corp.*, 356 F. Supp. 2d 776, 782 (E.D. Mich. 2005).

56. The Defendants violated M.C.L. § 445.252(a) by communicating with the Plaintiff in a misleading or deceptive manner by filing a complaint against him in the wrong venue.

57. The Defendants violated M.C.L. § 445.252(e) for the foregoing reasons.

58. The Defendants violated M.C.L. 445.252(n) by using a harassing, oppressive, and/or abusive method(s) to collect the debt at issue.

59. The Defendants violated M.C.L. 445.252(q) by failing to implement a procedure designed to prevent each of the above-listed MCPA violations by the Defendant's agents and/or employees.

60. The Defendants' foregoing acts in attempting to collect this alleged debt violated MCL 445.252e, which prohibits a Regulated Person from "making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt

or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt." The Defendant initiated collection via lawsuit filed in the incorrect venue.

61. The Defendants' foregoing acts in attempting to collect this alleged debt violated MCL §445.252f, which prohibits a Regulated Person from "misrepresenting in a communication with a debt any of the following: (i) the legal status of a legal action being taken or threatened and/or (ii) the legal rights of the creditor or debtor."

62. The Defendants, specifically by way of the communications between its' agents and representatives and the Plaintiff, clearly misrepresented to the Plaintiff his legal rights.

63. Plaintiff has suffered damages as a result of these violations of the Michigan Collection Practices Act.

64. These violations of the MCPA were willful, and as a result the Plaintiff is entitled to actual damages above $50.00 pursuant to M.C.L. § 445.257; statutory damages in an amount up to $150.00 pursuant to M.C.L. § 445.257; and reasonable attorney's fees and court costs pursuant to M.C.L. § 445.257.

CONCLUSION

COUNT I VIOLATIONS OF 15. U.S.C § 1692

WHEREFORE, based upon the foregoing facts, the Plaintiff respectfully requests the following relief:

(A) Actual damages for Plaintiff pursuant to 15 U.S.C. §1692k and M.C.L. § 339.916(2);

(B) Statutory damages for Plaintiff pursuant to 15 U.S.C. §1692k and M.C.L. § 339.916(2);

(C) Costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k and M.C.L. § 339.916(2); and

(D) Such further relief as the court deems just and proper.

COUNT II & III- VIOLATION OF MICHIGAN OCCUPATIONAL CODE AND MICHIGAN COLLECTION PRACTICES ACT

WHEREFORE, based upon the foregoing facts, the Plaintiff respectfully requests the following relief:

(A) Actual damages pursuant to M.C.L. 339.916(2);

(B) Treble the actual damages pursuant to M.C.L. 339.916(2);

(C) Statutory damages pursuant to M.C.L. 339.916(2); and

(D) Reasonable attorney's fees and court costs pursuant to M.C.L. 339.916(2).

Demand for Trial by Jury

Plaintiff demands trial by jury.

Respectfully submitted,

Dated: May 19, 2017

/s/ Nicholas Reyna
By: Nicholas Reyna (P68328)
Attorney for Plaintiff
528 Bridge St., Ste. 1A
Grand Rapids, MI 49504
(616) 235-4444